

FIRST REGULAR SESSION

HOUSE BILL NO. 1068

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE BURLISON.

1826H.021

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 198.006 and 198.073, RSMo, and to enact in lieu thereof two new sections relating to long-term care facilities.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 198.006 and 198.073, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 198.006 and 198.073, to read as follows:

198.006. As used in sections 198.003 to 198.186, unless the context clearly indicates otherwise, the following terms mean:

- (1) "Abuse", the infliction of physical, sexual, or emotional injury or harm;
- (2) "Activities of daily living" or "ADL", one or more of the following activities of daily living:
 - (a) Eating;
 - (b) Dressing;
 - (c) Bathing;
 - (d) Toileting;
 - (e) Transferring; and
 - (f) Walking;
- (3) "Administrator", the person who is in general administrative charge of a facility;
- (4) "Affiliate":
 - (a) With respect to a partnership, each partner thereof;
 - (b) With respect to a limited partnership, the general partner and each limited partner with an interest of five percent or more in the limited partnership;

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17 (c) With respect to a corporation, each person who owns, holds or has the power to vote
18 five percent or more of any class of securities issued by the corporation, and each officer and
19 director;

20 (d) With respect to a natural person, any parent, child, sibling, or spouse of that person;

21 (5) "Appropriately trained and qualified individual", an individual who is licensed or
22 registered with the state of Missouri in a health care-related field or an individual with a degree
23 in a health care-related field or an individual with a degree in a health care, social services, or
24 human services field or an individual licensed under chapter 344 and who has received facility
25 orientation training under 19 CSR 30-86042(18), and dementia training under section 192.2000
26 and twenty-four hours of additional training, approved by the department, consisting of definition
27 and assessment of activities of daily living, assessment of cognitive ability, service planning, and
28 interview skills;

29 (6) "Assisted living facility", any premises, other than a residential care facility,
30 intermediate care facility, or skilled nursing facility, that is utilized by its owner, operator, or
31 manager to provide twenty-four-hour care and services and protective oversight to three or more
32 residents who are provided with shelter, board, and who may need and are provided with the
33 following:

34 (a) Assistance with any activities of daily living and any instrumental activities of daily
35 living;

36 (b) Storage, distribution, or administration of medications; and

37 (c) Supervision of health care under the direction of a licensed physician, provided that
38 such services are consistent with a social model of care; Such term shall not include a facility
39 where all of the residents are related within the fourth degree of consanguinity or affinity to the
40 owner, operator, or manager of the facility;

41 (7) "Community-based assessment", documented basic information and analysis
42 provided by appropriately trained and qualified individuals describing an individual's abilities
43 and needs in activities of daily living, instrumental activities of daily living, vision/hearing,
44 nutrition, social participation and support, and cognitive functioning using an assessment tool
45 approved by the department of health and senior services that is designed for community-based
46 services and that is not the nursing home minimum data set;

47 (8) "Dementia", a general term for the loss of thinking, remembering, and reasoning so
48 severe that it interferes with an individual's daily functioning, and may cause symptoms that
49 include changes in personality, mood, and behavior;

50 (9) "Department", the Missouri department of health and senior services;

51 (10) "Emergency", a situation, physical condition or one or more practices, methods or
52 operations which presents imminent danger of death or serious physical or mental harm to
53 residents of a facility;

54 (11) "Facility", any residential care facility, assisted living facility, intermediate care
55 facility, or skilled nursing facility;

56 (12) "Health care provider", any person providing health care services or goods to
57 residents and who receives funds in payment for such goods or services under Medicaid;

58 (13) "Instrumental activities of daily living", or "IADL", one or more of the following
59 activities:

60 (a) Preparing meals;

61 (b) Shopping for personal items;

62 (c) Medication management;

63 (d) Managing money;

64 (e) Using the telephone;

65 (f) Housework; and

66 (g) Transportation ability;

67 (14) "Intermediate care facility", any premises, other than a residential care facility,
68 assisted living facility, or skilled nursing facility, which is utilized by its owner, operator, or
69 manager to provide twenty-four-hour accommodation, board, personal care, and basic health and
70 nursing care services under the daily supervision of a licensed nurse and under the direction of
71 a licensed physician to three or more residents dependent for care and supervision and who are
72 not related within the fourth degree of consanguinity or affinity to the owner, operator or
73 manager of the facility;

74 (15) **"Intermittent health-related care", licensed nursing services or professional**
75 **therapies which are provided no more than five days per week or licensed nursing services**
76 **or professional therapies which are provided six or seven days per week for temporary**
77 **periods of time with a predictable end within forty-five days;**

78 (16) "Manager", any person other than the administrator of a facility who contracts or
79 otherwise agrees with an owner or operator to supervise the general operation of a facility,
80 providing such services as hiring and training personnel, purchasing supplies, keeping financial
81 records, and making reports;

82 [(16)] (17) "Medicaid", medical assistance under section 208.151, et seq., in compliance
83 with Title XIX, Public Law 89-97, 1965 amendments to the Social Security Act (42 U.S.C. 301,
84 et seq.), as amended;

85 [(17)] (18) **"More than minimal assistance", any one or more of the following**
86 **actions:**

87 **(a) Requires assistance to traverse down stairways;**

88 **(b) Requires assistance to open a door;**

89 **(c) Requires assistance to propel a wheelchair;**

90 **(d) Requires more than one person to assist with a transfer; or**

91 **(e) Requires more than intermittent health-related care;**

92 **(19)** "Neglect", the failure to provide, by those responsible for the care, custody, and
93 control of a resident in a facility, the services which are reasonable and necessary to maintain the
94 physical and mental health of the resident, when such failure presents either an imminent danger
95 to the health, safety or welfare of the resident or a substantial probability that death or serious
96 physical harm would result;

97 **[(18)] (20)** "Operator", any person licensed or required to be licensed under the
98 provisions of sections 198.003 to 198.096 in order to establish, conduct or maintain a facility;

99 **[(19)] (21)** "Owner", any person who owns an interest of five percent or more in:

100 (a) The land on which any facility is located;

101 (b) The structure or structures in which any facility is located;

102 (c) Any mortgage, contract for deed, or other obligation secured in whole or in part by
103 the land or structure in or on which a facility is located; or

104 (d) Any lease or sublease of the land or structure in or on which a facility is located.

105

106 Owner does not include a holder of a debenture or bond purchased at public issue nor does it
107 include any regulated lender unless the entity or person directly or through a subsidiary operates
108 a facility;

109 **[(20)] (22)** "Protective oversight", an awareness twenty-four hours a day of the location
110 of a resident, the ability to intervene on behalf of the resident, the supervision of nutrition,
111 medication, or actual provisions of care, and the responsibility for the welfare of the resident,
112 except where the resident is on voluntary leave;

113 **[(21)] (23)** "Resident", a person who by reason of aging, illness, disease, or physical or
114 mental infirmity receives or requires care and services furnished by a facility and who resides
115 or boards in or is otherwise kept, cared for, treated or accommodated in such facility for a period
116 exceeding twenty-four consecutive hours;

117 **[(22)] (24)** "Residential care facility", any premises, other than an assisted living facility,
118 intermediate care facility, or skilled nursing facility, which is utilized by its owner, operator or
119 manager to provide twenty-four-hour care to three or more residents, who are not related within
120 the fourth degree of consanguinity or affinity to the owner, operator, or manager of the facility
121 and who need or are provided with shelter, board, and with protective oversight, which may
122 include storage and distribution or administration of medications and care during short-term

illness or recuperation, except that, for purposes of receiving supplemental welfare assistance payments under section 208.030, only any residential care facility licensed as a residential care facility II immediately prior to August 28, 2006, and that continues to meet such licensure requirements for a residential care facility II licensed immediately prior to August 28, 2006, shall continue to receive after August 28, 2006, the payment amount allocated immediately prior to August 28, 2006, for a residential care facility II under section 208.030;

~~[(23)]~~ **(25)** "Skilled nursing facility", any premises, other than a residential care facility, an assisted living facility, or an intermediate care facility, which is utilized by its owner, operator or manager to provide for twenty-four-hour accommodation, board and skilled nursing care and treatment services to at least three residents who are not related within the fourth degree of consanguinity or affinity to the owner, operator or manager of the facility. Skilled nursing care and treatment services are those services commonly performed by or under the supervision of a registered professional nurse for individuals requiring twenty-four-hours-a-day care by licensed nursing personnel including acts of observation, care and counsel of the aged, ill, injured or infirm, the administration of medications and treatments as prescribed by a licensed physician or dentist, and other nursing functions requiring substantial specialized judgment and skill;

~~[(24)]~~ **(26)** "Social model of care", long-term care services based on the abilities, desires, and functional needs of the individual delivered in a setting that is more home-like than institutional and promotes the dignity, individuality, privacy, independence, and autonomy of the individual. Any facility licensed as a residential care facility II prior to August 28, 2006, shall qualify as being more home-like than institutional with respect to construction and physical plant standards;

~~[(25)]~~ **(27)** "Vendor", any person selling goods or services to a health care provider;

~~[(26)]~~ **(28)** "Voluntary leave", an off-premise leave initiated by:

(a) A resident that has not been declared mentally incompetent or incapacitated by a court; or

(b) A legal guardian of a resident that has been declared mentally incompetent or incapacitated by a court.

198.073. 1. A residential care facility shall admit or retain only those persons who are capable mentally and physically of negotiating a normal path to safety using assistive devices or aids when necessary, and who may need assisted personal care within the limitations of such facilities, and who do not require hospitalization or skilled nursing care.

2. Notwithstanding the provisions of subsection 1 of this section, those persons previously qualified for residence who may have a temporary period of incapacity due to illness, surgery, or injury, which period does not exceed ~~[forty-five]~~ **thirty** days, may be allowed to remain in a residential care facility or assisted living facility if approved by a physician.

9 3. Any facility licensed as a residential care facility II on August 27, 2006, shall be
10 granted a license as an assisted living facility, as defined in section 198.006, on August 28, 2006,
11 regardless of the laws, rules, and regulations for licensure as an assisted living facility as long
12 as such facility continues to meet all laws, rules, and regulations that were in place on August
13 27, 2006, for a residential care facility II. At such time that the average total reimbursement, not
14 including residents' cost-of-living increases in their benefits from the Social Security
15 Administration after August 28, 2006, for the care of persons eligible for Medicaid in an assisted
16 living facility is equal to or exceeds forty-one dollars per day, all facilities with a license as an
17 assisted living facility shall meet all laws, rules, and regulations for licensure as an assisted living
18 facility. Nothing in this section shall be construed to allow any facility that has not met the
19 requirements of subsections 4 and 6 of this section to care for any individual with a physical,
20 cognitive, or other impairment that prevents the individual from safely evacuating the facility.

21 4. Any facility licensed as an assisted living facility, as defined in section 198.006,
22 except for facilities licensed under subsection 3 of this section, may admit or retain an individual
23 for residency in an assisted living facility only if the individual does not require hospitalization
24 or skilled nursing placement, and only if the facility:

25 (1) Provides for or coordinates oversight and services to meet the needs of the resident
26 as documented in a written contract signed by the resident, or legal representative of the resident;

27 (2) Has twenty-four-hour staff appropriate in numbers and with appropriate skills to
28 provide such services;

29 (3) Has a written plan for the protection of all residents in the event of a disaster,
30 including keeping residents in place, evacuating residents to areas of refuge, evacuating residents
31 from the building if necessary, or other methods of protection based on the disaster and the
32 individual building design;

33 (4) Completes a pre-move-in screening with participation of the prospective resident;

34 (5) Completes for each resident a community-based assessment, as defined in
35 subdivision (7) of section 198.006:

36 (a) Upon admission;

37 (b) At least semiannually; and

38 (c) Whenever a significant change has occurred in the resident's condition which may
39 require a change in services;

40 (6) Based on the assessment in subsection 7 of this section and subdivision (5) of this
41 subsection, develops an individualized service plan in partnership with the resident, or legal
42 representative of the resident, that outlines the needs and preferences of the resident. The
43 individualized service plan will be reviewed with the resident, or legal representative of the
44 resident, at least annually, or when there is a significant change in the resident's condition which

45 may require a change in services. The signatures of an authorized representative of the facility
46 and the resident, or the resident's legal representative, shall be contained on the individualized
47 service plan to acknowledge that the service plan has been reviewed and understood by the
48 resident or legal representative;

49 (7) Makes available and implements self-care, productive and leisure activity programs
50 which maximize and encourage the resident's optimal functional ability;

51 (8) Ensures that the [residence] **facility** does not accept or retain a resident who:

52 (a) Has exhibited behaviors that present a reasonable likelihood of serious harm to
53 himself or herself or others;

54 (b) Requires physical restraint;

55 (c) Requires chemical restraint. As used in this paragraph, the following terms mean:

56 a. "Chemical restraint", a psychopharmacologic drug that is used for discipline or
57 convenience and not required to treat medical symptoms;

58 b. "Convenience", any action taken by the facility to control resident behavior or
59 maintain residents with a lesser amount of effort by the facility and not in the resident's best
60 interest;

61 c. "Discipline", any action taken by the facility for the purpose of punishing or penalizing
62 residents;

63 (d) Requires skilled nursing services as defined in subdivision [(23)] **(25)** of section
64 198.006 for which the facility is not licensed or able to provide;

65 (e) Requires more than one person to simultaneously physically assist the resident with
66 any activity of daily living, with the exception of bathing and transferring;

67 (f) Is bed-bound or similarly immobilized due to a debilitating or chronic condition; and

68 (9) Develops and implements a plan to protect the rights, privacy, and safety of all
69 residents and to protect against the financial exploitation of all residents;

70 (10) Complies with the training requirements of subsection 7 of section 192.2000.

71 5. Exceptions to paragraphs (d) to (f) of subdivision (8) of subsection 4 of this section
72 shall be made for residents on hospice, provided the resident, designated representative, or both,
73 and the assisted living provider, physician, and licensed hospice provider all agree that such
74 program of care is appropriate for the resident.

75 6. If an assisted living facility accepts or retains any individual with a physical, cognitive,
76 or other impairment [that prevents the individual from] **who requires more than minimal**
77 **assistance for** safely evacuating the facility [with minimal assistance], the facility shall:

78 (1) Have sufficient staff present and awake twenty-four hours a day to assist in the
79 evacuation;

80 (2) Include an individualized evacuation plan in the service plan of the resident; [and]

81 (3) Take necessary measures to provide residents with the opportunity to explore the
82 facility and, if appropriate, its grounds; [and]

83 (4) **Require any resident who is nonambulatory or who has dementia, needs more**
84 **than minimal assistance, and is unable to safely evacuate the facility to reside on the**
85 **ground floor level of the facility; and**

86 (5) Use a personal electronic monitoring device for any resident whose physician
87 recommends the use of such device.

88 7. **Nothing in this section shall be construed to allow an assisted living facility to**
89 **admit or retain any resident who requires more than one person assisting with eating; or**
90 **requires twenty-four-hour licensed nursing care to sufficiently meet the nursing needs of**
91 **a resident; or uses the services of a registered professional nurse at least eight consecutive**
92 **hours a day for seven days a week for more than forty-five consecutive days; or is a danger**
93 **to self or others.**

94 8. An individual admitted or readmitted to the facility shall have an admission physical
95 examination by a licensed physician **signed prior to admission to the facility**. Documentation
96 [should be obtained prior to admission but shall be on file not later than ten days after admission
97 and] shall contain information regarding the individual's current medical status and any special
98 orders or procedures that should be followed. If the individual is admitted directly from a
99 hospital or another long-term care facility and is accompanied on admission by a report that
100 reflects his or her current medical status, an admission physical shall not be required.

101 [8.] 9. Facilities licensed as an assisted living facility shall disclose to a prospective
102 resident, or legal representative of the resident, information regarding the services the facility is
103 able to provide or coordinate, the costs of such services to the resident, and the resident
104 conditions that will require discharge or transfer, including the provisions of subdivision (8) of
105 subsection 4 of this section.

106 [9.] 10. **If an assisted living facility locks, secures, segregates, or provides a special**
107 **program for persons with Alzheimer's disease, dementia, or related disorders and**
108 **advertises to the public that it is offering a special care unit, the facility shall:**

109 (1) **Provide an individual service plan in writing stating the program's philosophy**
110 **reflecting the needs of residents with Alzheimer's disease, dementia, or related disorders**
111 **to the resident and his or her family or to the resident's legal representative upon**
112 **admission and shall provide a copy to the department of health and senior services upon**
113 **the issuance of a valid license;**

114 (2) **Provide the process and criteria for placement in or transfer or discharge from**
115 **a program for residents with Alzheimer's disease, dementia, or related disorders to the**
116 **department of health and senior services upon the issuance of a valid license and shall**

117 provide a copy to each resident and his or her family or to the resident's legal
118 representative upon admission;

119 (3) Specify the process used for assessment and establishment of a plan of care and
120 its implementation, including the method by which the plan of care evolves and is
121 responsive to changes in condition;

122 (4) Institute a quarterly review process for all resident care plans;

123 (5) Provide information on staff training and continuing education practices to the
124 department of health and senior services upon the issuance of a valid license and shall
125 provide a copy to each resident and his or her family or to the resident's legal
126 representative upon admission;

127 (6) Ensure that there is an adequate and sufficient number of staff awake, fully
128 dressed, and capable of providing for resident needs consistent with the resident service
129 plans on duty at all times;

130 (7) Ensure a representative willing, capable, and available to make health care and
131 financial decisions is designated for each resident and accepts that responsibility in
132 writing;

133 (8) List the frequency and types of activities for residents with Alzheimer's disease,
134 dementia, or related disorders;

135 (9) Detail the physical environment and design features appropriate to support the
136 function of residents with Alzheimer's disease, dementia, or related disorders; and

137 (10) Provide safety and security measures to the department of health and senior
138 services upon the issuance of a valid license and shall provide a copy to each resident and
139 his or her family or to the resident's legal representative upon admission.

140 11. After January 1, 2008, no entity shall hold itself out as an assisted living facility or
141 advertise itself as an assisted living facility without obtaining a license from the department to
142 operate as an assisted living facility. Any residential care facility II licensed under this chapter
143 that does not use the term assisted living in the name of its licensed facility on or before May 1,
144 2006, shall be prohibited from using such term after August 28, 2006, unless such facility meets
145 the requirements for an assisted living facility in subsection 4 of this section. Any facility
146 licensed as an intermediate care facility prior to August 28, 2006, that provides the services of
147 an assisted living facility, as described in paragraphs (a), (b), and (c) of subdivision (6) of section
148 198.006, utilizing the social model of care, may advertise itself as an assisted living facility
149 without obtaining a license from the department to operate as an assisted living facility.

150 [10.] 12. The department of health and senior services shall promulgate rules to ensure
151 compliance with this section. Any rule or portion of a rule, as that term is defined in section
152 536.010, that is created under the authority delegated in this section shall become effective only

153 if it complies with and is subject to all of the provisions of chapter 536 and, if applicable, section
154 536.028. This section and chapter 536 are nonseverable and if any of the powers vested with the
155 general assembly pursuant to chapter 536 to review, to delay the effective date, or to disapprove
156 and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority
157 and any rule proposed or adopted after August 28, 2006, shall be invalid and void.

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